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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,321	06/27/2001	Sergey N. Razumov	59036-022	3651

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McDERMOTT, WILL & EMERY
600 13Th Street, N.W.
Washington, DC 20005-3096

EXAMINER

JAKETIC, BRYAN J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/891,321

Applicant(s)

RAZUMOV, SERGEY N.

Examiner

Bryan Jaketic

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 4 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant claims a "desirable fashion orientation" in lines 2-3 of the claim. It is unclear what constitutes a desirable fashion orientation.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5, 7-14, 16-20, 22, and 24-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose. Rose teaches a system for selling goods, comprising an electronic device configured to enable a customer to access a group of items pre-selected for the user based on an evaluation (see col. 8, line 58 through col. 10, line 6). Rose does not teach that the items are pre-selected based on an evaluation made when a human model having similar individual characteristics as the customer tries on the goods. However, the items are pre-selected based on the customer's body type

(see col. 8, lines 58-60, in which pre-selected styles are suggested based on the customer's body type). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a human model to try on the pre-selected items to ensure that the items are appropriate for the customer's body type.

Rose does not teach that a model or an expert makes the evaluation. However, it is common in the art for evaluations to be made by experts or the person trying on clothes. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a model or an expert to make the evaluation, because such individual's would be qualified to make a correct evaluation.

Rose does not teach the step of enabling the customer to watch images depicting a human model wearing the pre-selected items and additional items. Rose instead teaches a step of enabling a customer to watch images depicting a virtual model wearing the pre-selected items and additional items (see Fig. 4). However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the step of enabling the customer to watch images depicting a human model, because a human model would provide a more realistic image.

Rose teaches the step of enabling a customer to pick up the desired ordered item at a designated retail facility (see col. 8, lines 32-38). Rose also teaches that the ordered clothes at the facility may be "ready for try-on" (see col. 8, lines 44-47). Rose does not teach the step of automatically assigning a fitting room, but it is common in the art to assign a fitting room. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the step of automatically assigning a

fitting room when the customer is identified to facilitate the customer's trying on the clothing.

Rose does not teach that the retail facility sells food products. However, it is common in the art for retail facilities to sell both food products and clothing. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a retail facility that sells clothing and food products to allow customers to purchase multiple types of goods at one location.

Rose does not teach that warehouses supply the retail facilities. However, it is common in the art for warehouses to supply retail facilities, and it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ warehouses with the invention of Rose et al, because warehouses provide efficient storage.

Rose does not teach that the classification takes eye color into account. However, it is common in the art to recommend clothing based on a customer's eye color, and it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the step of taking eye color into account for classification to select clothing that would complement a customer's eyes.

5. Claims 8, 15, 21, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose as applied to claims 1, 14, and 20 above, and further in view of Weaver. Rose does not teach the step of allowing the customer to view the model in motion. Weaver teaches a shopping system that allows customers to view models in motion while wearing pre-selected clothing items (see Figures 7, 8, 9A, and 9B). It

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would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the teachings of Weaver with the invention of Rose to allow customers to get a better idea of how clothes will fit.

Rose does not teach that a customer's hair color or skin tone are taken into account. Weaver teaches that hair color (17) and skin tone (15) are both taken into account in making recommendations. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the teachings of Weaver with the invention of Rose to take into account hair color and skin tone to recommend items of clothing that best complement a customer.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gazzuolo, Sakaguchi, Deziel, Maloomian, and Goldman disclose virtual models for designing and trying on clothes. Scott discloses a lifelike model for designing garments. Harada et al disclose a customer management system that stores images of the customer and purchased clothes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan Jaketic whose telephone number is (703) 308-0134. The examiner can normally be reached on Monday through Friday (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (703)308-5183. The fax phone

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number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

bj



12/8/03